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SDMS Document



93321

March 14, 2006

Via Telecopier and Certified Mail/RRR

Kedari Reddy, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th floor
New York, NY 10007-1866

Re: Belleville Industrial Center Response to EPA General
Notice Letter dated February 14, 2006
Diamond Alkali Superfund Site
Notice of Potential Liability for Response
Actions in the Lower Passaic River Study Area
Our File No.: 060201

Dear Ms. Reddy:

We are environmental counsel for Belleville Industrial Center ("BIC"). In that capacity, we are responding on behalf of BIC to the above letter, received by BIC on February 17, 2006 (the "Letter" - copy attached for your reference). Specifically, we are responding to the provision at page three of the Letter which states that written notification should be provided to EPA and to William Hyatt, Esq., Common Counsel for the Lower Passaic River Study Area Cooperating Parties Group (the "Group"), documenting BIC's decision whether or not to join the Group and settle with EPA no later than 30 calendar days from receipt of the Letter.

The Letter states that it is being sent based on information which EPA evaluated indicating that the former Helion Industries, Inc. ("Helion") released substances from its operations at 681 Main Street in Belleville, New Jersey into the Lower Passaic River Study Area (the "Study Area"). Please be advised that BIC is separate and distinct from Helion, a former tenant at the 681 Main Street property. Accordingly, to the extent that there is a basis for the Letter to be sent at all, it should be directed to Helion, not BIC. We understand that Helion and/or its principals are or have been represented by Tom Bouregy, Esq. and Ray Wiss, Esq., Wiss, Cooke and Santomauro, 3 University Plaza, Hackensack, New Jersey 07061. Documents have indicated that one of those principals who is a contact is Charles Bieber, 128 Joanna Drive, Toms River, New Jersey.

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Kedari Reddy, Assistant Regional Counsel

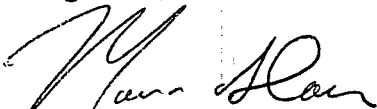
March 14, 2006

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The Letter provides no information as to the basis for EPA's belief that hazardous substances from Helion's former operations impacted the Study Area. Further, based on our client's understanding of environmental issues at the former Helion site, there is no reason to believe that contamination from Helion's operations would have migrated to the Study Area. Our client's understanding of the environmental conditions at the Helion site is based on environmental documents generated in the course of remedial efforts taken under New Jersey's Industrial Site Recovery Act ("ISRA"). BIC has undertaken these activities due to Helion's failure to address contamination from its former operations in violation of ISRA requirements. If necessary, we can provide a copy of the ISRA documents to EPA upon request.

Accordingly, for the reasons given above, BIC will not be joining the Group. ~~BIC may reconsider if EPA provides compelling information of Helion's former operations impacting the Study Area.~~ Further, please address any future correspondence in this matter to Helion. Finally, to the extent that there is further communication with BIC, please send it to this office with a copy to BIC directed to Carol Shapiro, President.

Regards,



Maura E. Blau

MEB:lv

Enclosure

cc: William H. Hyatt, Esq.
Belleville Industrial Center
Stuart Kuritsky, Esq.

Certified No.: 7160 3901 9842 9267 4754



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 14 2006

**GENERAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Lynn Clurman, President
Belleville Industrial Center
681 Main St.
Building 43
Belleville, NJ 07109

RE: Diamond Alkali Superfund Site
Notice of Potential Liability for
Response Actions in the Lower Passaic River Study Area, New Jersey

Dear Mr. Clurman:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release and/or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9601 et seq. Accordingly, EPA is seeking your cooperation in an innovative approach to environmental remediation and restoration activities for the Lower Passaic River.

EPA has documented the release or threatened release of hazardous substances, pollutants and contaminants into the six-mile stretch of the river, known as the Passaic River Study Area, which is part of the Diamond Alkali Superfund Site ("Site") located in Newark, New Jersey. Based on the results of previous CERCLA remedial investigation activities and other environmental studies, including a reconnaissance study of the Passaic River conducted by the United States Army Corps of Engineers ("USACE"), EPA has further determined that contaminated sediments and other potential sources of hazardous substances exist along the entire 17-mile tidal reach of the Lower Passaic River. Thus, EPA has decided to expand the area of study to include the entire Lower Passaic River and its tributaries from Dundee Dam to Newark Bay ("Lower Passaic River Study Area").

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Internet Address (URL) • <http://www.epa.gov>

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By this letter, EPA is notifying the Belleville Industrial Center of its potential liability relating to the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Under CERCLA, potentially responsible parties ("PRPs") include current and past owners and operators of a facility, as well as persons who arranged for the disposal or treatment of hazardous substances at the Site, or the transport of hazardous substances to the Site.

In recognition of our complementary roles, EPA has formed a partnership with USACE and the New Jersey Department of Transportation-Office of Maritime Resources ("OMR") ["the governmental partnership"] to identify and to address water quality improvement, remediation, and restoration opportunities in the 17-mile Lower Passaic River. This governmental partnership is consistent with a national Memorandum of Understanding ("MOU") executed on July 2, 2002 between EPA and USACE. This MOU calls for the two agencies to cooperate, where appropriate, on environmental remediation and restoration of degraded urban rivers and related resources. In agreeing to implement the MOU, the EPA and USACE will use their existing statutory and regulatory authorities in a coordinated manner. These authorities for EPA include CERCLA, the Clean Water Act, and the Resource Conservation and Recovery Act. The USACE's authority stems from the Water Resources Development Act ("WRDA"). WRDA allows for the use of some federal funds to pay for a portion of the USACE's approved projects related to ecosystem restoration.

For the first phase of the Lower Passaic River Restoration Project, the governmental partners are proceeding with an integrated five- to seven-year study to determine an appropriate remediation and restoration plan for the river. The study will involve investigation of environmental impacts and pollution sources, as well as evaluation of alternative actions, leading to recommendations of environmental remediation and restoration activities. The study is being conducted pursuant to CERCLA and WRDA.

Based on information that EPA evaluated during the course of its investigation of the Site, EPA believes that hazardous substances were released from the former Helion Industries, Inc. operations located at 681 Main Street in Belleville, New Jersey, into the Lower Passaic River Study Area. Hazardous substances, pollutants and contaminants released from the facility into the river present a risk to the environment and the humans who may ingest contaminated fish and shellfish. Therefore, the Belleville Industrial Center may be potentially liable for response costs which the government may incur relating to the study of the Lower Passaic River. In addition, responsible parties may be required to pay damages for injury to, destruction of, or loss of natural resources, including the cost of assessing such damages.

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at the Site may be substantially limited. If you believe, and can document, that you fall within that category, please inform Ms. Reddy and Mr. Hyatt in writing at the addresses identified in this letter. You will be asked to submit financial records including federal income tax returns as well as audited financial statements to substantiate such a claim.

Please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy. You are also requested to preserve and retain any documents now in your Company's or its agents' possession or control, that relate in any manner to your facility or the Site or to the liability of any person under CERCLA for response actions or response costs at or in connection with the facility or the Site, regardless of any corporate document retention policy to the contrary.

Enclosed is a list of the other PRPs who have received Notice letters. This list represents EPA's findings on the identities of PRPs to date. We are continuing efforts to locate additional PRPs who have released hazardous substances, directly or indirectly, into the Lower Passaic River Study Area. Exclusion from the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site. Be advised that notice of your potential liability at the Site may be forwarded to all parties on this list as well as to the Natural Resource Trustees.

We request that you become a "cooperating party" for the Lower Passaic River Restoration Project. As a cooperating party, you, along with many other such parties, will be expected to fund the CERCLA study. Upon completion of the study, it is expected that CERCLA and WRDA processes will be used to identify the required remediation and restoration programs, as well as the assignment of remediation and restoration costs. At this time, the commitments of the cooperating parties will apply only to the study. For those who choose not to cooperate, EPA may apply the CERCLA enforcement process, pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §9606(a) and §9607(a) and other laws.

You may become a cooperating party by participating in the Cooperating Parties Group ("Group") that has already formed to fund the CERCLA study portion of the Lower Passaic River Restoration Project.

We strongly encourage you to contact the Group to discuss your participation. You may do so by contacting:

William H. Hyatt, Esq.
Common Counsel for the Lower Passaic River Study Area Cooperating Parties Group
Kirkpatrick & Lockhart LLP
One Newark Center, 10th Floor
Newark, New Jersey 07102
(973) 848-4045
whyatt@kl.com

Written notification should be provided to EPA and Mr. Hyatt documenting your intention to join the Group and settle with EPA no later than 30 calendar days from your receipt of this letter. The result of any agreement between EPA and your Company as part of the Group will need to be memorialized in an Administrative Order on Consent. EPA's written notification should be mailed to:

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Kedari Reddy, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th Floor
New York, New York 10007-1866

Pursuant to CERCLA Section 113(k), EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files along with the Site file are located at EPA's Region 2 office located at 290 Broadway, New York, NY on the 18th floor. You may call the Records Center at (212) 637-4308 to make an appointment to view the administrative record and/or the Site file for the Diamond Alkali Site, Passaic River.

As you may be aware, the Superfund Small Business Liability Relief and Brownfields Revitalization Act became effective on January 11, 2002. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

Inquiries by counsel or inquiries of a legal nature should be directed to Ms. Reddy at (212) 637-3106. Questions of a technical nature should be directed to Elizabeth Butler, Remedial Project Manager, at (212) 637-4396.

Sincerely yours,



Ray Basso, Strategic Integration Manager
Emergency and Remedial Response Division

Enclosure

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A. Professional As

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Westfield, NJ 07091-0580



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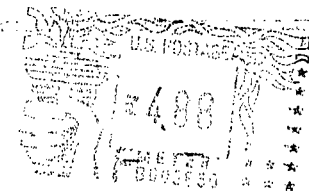
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Kedari Reddy, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 17th floor
New York, NY 10007-1866



**RETURN RECEIPT
REQUESTED**

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